

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MARGARET WYNALDA,

Appellant,

v.

DEPARTMENT OF TRANSPORTATION,

Respondent.

) Case No. DISM-03-0012

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and BUSSE NUTLEY, Member. The hearing was held at the Department of Transportation in Seattle, Washington, on October 30 and 31, 2003.

1.2 **Appearances.** Appellant Margaret Wynalda appeared *pro se*. Michelle Garzon, Assistant Attorney General, represented Respondent Department of Transportation.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for the causes of neglect of duty, insubordination, gross misconduct, and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleges that Appellant behaved in an inappropriate, disrespectful and hostile manner to members of the public.

II. FINDINGS OF FACT

2.1 Appellant was a Bridge Tender and permanent employee of Respondent Department of Transportation. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 27, 2003.

2.2 Appellant began her employment with the Department of Transportation on November 6, 2000. Appellant's main duty as a Bridge Tender was to open and close the bridge to allow the safe passage of water traffic under the Montlake Bridge. As a Bridge Tender, Appellant had frequent contact with the public.

2.3 Appellant has been the subject of the following corrective and disciplinary actions:

- A letter of reprimand dated September 18, 2001, after she refused to open the bridge for the tugboat Island Breeze. Captain Tobias Remmem also complained Appellant screamed profanities at him over the telephone on August 29, 2001. The department warned Appellant that similar incidents could result in further corrective or disciplinary action.
- In January 2002, Archie Allen, Bridge Maintenance and Operations Assistant Superintendent, addressed concerns regarding Appellant's workplace behavior. On January 4, 2002, he provided Appellant with a letter of expectations instructing her to refrain from using profanity and directing her to work with others in a cooperative, professional and courteous manner.
- Effective March 1, 2002 through March 5, 2002, Thomas Lentz, Assistant Regional Administrator for Maintenance and Traffic, suspended Appellant without pay. Mr. Lentz charged Appellant with neglect of duty, insubordination, gross misconduct, and willful violation of published employing agency policies. Mr. Lentz alleged Appellant was uncooperative, hostile, disrespectful, sarcastic, and unprofessional during a retraining period; refused to follow directives; shouted at co-workers; and used profanity. Wynalda v. Department of Transportation, SUSP-02-0012 (2003).

1 2.4 Mr. Remmem previously filed a complaint about Appellant's refusal to open the bridge to
2 allow his tugboat to pass through on August 29, 2001. The complaint resulted in Appellant
3 receiving the September 18, 2001 letter of reprimand. There is no dispute that Appellant believed
4 the letter of reprimand was unwarranted, and she was angry with Mr. Remmem and Mike Soriano,
5 who also navigated the same tugboat under the Mountlake Bridge. Following the letter of
6 reprimand, which resulted from Mr. Remmem's complaint, Appellant claimed Mr. Soriano was
7 harassing her. The department conducted an investigation and concluded the events were
8 unfounded and unrelated to work. The agency encouraged Appellant to seek an anti-harassment
9 order against Mr. Soriano if he was harassing her during off-duty hours. They encouraged her to
10 report to management any harassment by Mr. Soriano that occurred during work hours.

11 12 **Incidents involving Tobias Remmem**

13 2.5 In the spring and summer of 2002, Mr. Remmem continued to have regular interaction with
14 Appellant whenever he required a bridge opening. Mr. Remmem routinely called Appellant on
15 radio channel 13, a public channel that can be heard by others. Mr. Remmem credibly testified that
16 whenever he made radio contact with Appellant, she was rude and spoke to him in a snide and
17 sarcastic manner. Frequently, Appellant did not respond to his requests in a timely manner, which
18 required him to call her repeatedly.

19
20 2.6 On May 23, 2002, Mr. Remmem called the Montlake Bridge several times to request a
21 bridge opening. When Appellant finally responded, Mr. Remmem asked whether she knew if there
22 was any other traffic in the waterway cut. Appellant responded it was not her job to tell him and
23 that her job was to open and close the bridge.

24
25 2.7 In June 2002, Mr. Remmem continued to experience problems with Appellant's lack of
26 response to his requests for bridge openings. On one occasion, Mr. Remmem called Appellant

1 twice and stated he wanted to establish contact with her before he entered the channel. Appellant
2 told Mr. Remmem his response was unnecessary and sarcastically told him to keep the “chatter
3 down on channel 13, okay?” Appellant’s comments could be heard by others, because she was on
4 the public channel.

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6 2.8 In late June 2002, Mr. Remmem contacted Appellant and informed her a “block light” (a red
7 light used to warn water traffic when a vessel is in the channel) was burned out. Appellant rudely
8 responded that if Mr. Remmem wanted to report the light, he could write a letter to the city and not
9 to bother her with anything that trivial.

10
11 2.9 On July 2, 2002, Mr. Remmem repeatedly called the Montlake Bridge to request an opening.
12 However, Appellant did not confirm she received his requests. Mr. Remmem’s tugboat was
13 carrying several thousand tons of cargo, and he became alarmed because he would be unable to
14 timely stop his vessel if Appellant failed to open the bridge. After a long wait, Appellant finally
15 acknowledged she had received his requests.

16
17 2.10 In July and August 2002, Appellant began taking repeated flash pictures at night as Mr.
18 Remmem piloted the tugboat through the Montlake Bridge cut. On one occasion, Mr. Remmem
19 called Appellant on the radio and informed her the flashes interfered with his visibility. Appellant
20 responded there was no problem with her taking pictures, and she sarcastically asked if he was not
21 capable of handling his vessel while someone took pictures of him. Appellant told Mr. Remmem,
22 “if you have a complaint, put it in writing.”

23
24 2.11 On July 22, 2002, Mr. Remmem called and thanked Appellant for opening the bridge in a
25 timely manner. Appellant angrily responded, “You're not welcome!”

1 2.12 On August 26, 2002, Mr. Remmem entered the cut to the Montlake Bridge when Appellant
2 made contact with him over channel 13. Appellant asked Mr. Remmem if he was going to pilot his
3 tugboat on Thursday, August 29, 2002. When Mr. Remmem refused to answer, Appellant
4 responded “you know, the one year anniversary of when you got me in trouble. Well, I’ll be
5 expecting you on Thursday.” Based on Appellant’s tone of voice and his prior interactions with
6 her, Mr. Remmem became concerned that Appellant was planning revenge against him for the
7 incident he reported the year prior. Mr. Remmem feared for his safety, and he subsequently called
8 his employer and asked to be removed from piloting that run. Mr. Remmem’s employer called the
9 Department of Transportation and filed a complaint against Appellant.
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11 **Incident involving Judy Billings**

12 2.13 On August 16, 2002, Judy Billings, a private citizen, was sailing her 27’ boat and she
13 required a bridge opening. At approximately 3:10 p.m., Ms. Billings blew her air horn. One long
14 blast indicated she wanted the bridge to open to allow her passage for the next scheduled bridge
15 opening at 3:30 p.m. At about 3:20 p.m., Appellant instructed Ms. Billings to blow her horn if she
16 wanted the bridge opened. Ms. Billings blew her horn again and proceeded toward the bridge. As
17 Ms. Billings approached directly in front of the bridge, Appellant announced over the loudspeaker
18 that she would not open the bridge for her. Appellant directed Ms. Billings to turn around and
19 return for the 6 p.m. bridge opening. Appellant’s refusal to open the bridge forced Ms. Billings to
20 navigate her boat out of the narrow passage in choppy waters and created a two and one half hour
21 delay for Ms. Billings.
22

23 2.14 David McCormick, Assistant Regional Administrator for Maintenance and Traffic, was
24 Appellant’s appointing authority. After Mr. Remmem and Ms. Billings filed complaints with the
25 department, the agency conducted an investigation and gave Appellant an opportunity to respond.
26 Mr. McCormick met with Appellant and her union representative. Appellant did not dispute the

1 charges, and she again claimed Mr. Soriano was harassing her. However, Appellant never notified
2 the agency of any harassing behavior by Mr. Soriano toward her during work time. Again, the
3 agency concluded Appellant's claims of harassment were unfounded.

4
5 2.15 During the meeting, Mr. McCormick observed Appellant's demeanor and attitude, and he
6 concluded Appellant did not show remorse for her behavior, and she did not acknowledge her
7 actions created safety issues. When Mr. McCormick asked if she would stop being rude to others,
8 Appellant responded she was not capable of doing that.

9
10 2.16 To determine the appropriate level of discipline, Mr. McCormick reviewed the letter of
11 expectations Mr. Allen gave to Appellant on January 4, 2002. Mr. McCormick concluded
12 Appellant failed to comply with the expected standard of conduct outlined in the letter. Mr.
13 McCormick determined the agency made considerable attempts to help beginning shortly after she
14 became employed with the department. However, he concluded Appellant's misconduct was
15 increasing in severity and scope, and she was refusing to do her job in a professional, courteous and
16 safe manner. Mr. McCormick concluded Appellant's behavior harmed the department's reputation
17 and interfered with their ability to meet their mission because her action negatively impacted the
18 public. Mr. Roberts concluded dismissal was the appropriate sanction.

19 20 **III. ARGUMENTS OF THE PARTIES**

21 3.1 Respondent asserts Appellant had a duty to operate the bridge in a safe manner and treat the
22 public with courtesy and respect. Respondent contends that Appellant neglected that duty when she
23 treated Mr. Remmem in an unprofessional, disrespectful and discourteous manner. Respondent
24 further argues that Appellant's actions toward Mr. Remmem and Ms. Billings created potential
25 safety threats and could not be tolerated by the department. Respondent argues Appellant was
26

1 insubordinate when she refused to comply with prior directives to treat others in a courteous and
2 professional manner. Respondent asserts dismissal was an appropriate sanction.

3
4 3.2 Appellant argues she was “beaten down” by the department and subjected to threats and
5 harassment from Mr. Soriano. Appellant asserts her complaints to management about Mr. Soriano
6 were ignored and that she was “driven to her limits.” Appellant claims she loved her job, went
7 beyond what was required of her position and provided good customer service. Appellant admits
8 she did engage in some unprofessional behavior, but she claims her behavior was directly affected
9 by the impact of Mr. Soriano’s abuse toward her.

10 11 IV. CONCLUSIONS OF LAW

12 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter.

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14 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
15 the charges upon which the action was initiated by proving by a preponderance of the credible
16 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
17 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep’t of
18 Corrections, PAB No. D82-084 (1983).

19
20 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
21 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep’t
22 of Social & Health Services, PAB No. D86-119 (1987).

23
24 4.4 Respondent has met its burden of proving that Appellant neglected her duty when she failed
25 she refused to open the bridge for Ms. Billings and repeatedly refused to cooperate with Mr.
26 Remmem’s request to open the bridge. Appellant behaved in an inappropriate, disrespectful and

1 hostile manner to members of the public. Furthermore, Appellant's sarcastic, disrespectful and
2 hostile demeanor toward members of the public was unacceptable.

3
4 4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior
5 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
6 Dep't of Social & Health Services, PAB No. D94-025 (1995).

7
8 4.6 The department gave Appellant clear expectations of acceptable and professional workplace
9 conduct, and she was given opportunities to correct her behavior. However, Appellant engaged in
10 a pattern of disrespect toward others. Therefore, Respondent has met its burden of proving that
11 Appellant was insubordinate when she refused directives from superiors to model acceptable
12 workplace behavior.

13
14 4.7 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
15 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant
16 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's
17 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

18
19 4.8 Appellant's behavior toward Mr. Remmem and Ms. Billings had a negative impact on the
20 department's ability to provide a public service in a courteous and professional manner.
21 Appellant's rude manner was not acceptable and adversely impacted the public image of the
22 department. Respondent has met its burden of proof that Appellant's behavior constituted gross
23 misconduct and adversely impacted the agency's ability to carry out its functions.

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25 4.9 In determining whether a sanction imposed is appropriate, consideration must be given to
26 the facts and circumstances, including the seriousness and circumstances of the offenses. The

1 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
2 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
3 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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5 4.10 Although it is not appropriate to initiate discipline based on prior formal and informal
6 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the
7 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.
8 D93-163 (1995).

9
10 4.11 Appellant displayed behavior that was intimidating, harassing, abusive, and hostile toward
11 the public. Appellant failed to modify her behavior despite prior counseling and disciplinary
12 actions. Therefore, Respondent has established that the disciplinary sanction of dismissal was
13 appropriate under the circumstances presented here, and the appeal should be denied.

14
15 **V. ORDER**

16 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Margaret Wynalda is denied.

17 DATED this _____ day of _____, 2004.

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19 WASHINGTON STATE PERSONNEL APPEALS BOARD

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21 _____
22 Walter T. Hubbard, Chair

23 _____
24 Gerald L. Morgen, Vice Chair

Busse Nutley, Member

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